

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GUADALUPE ARENAS VARGAS,
Individually and As Representative of the
Estate of MARTIN ANASTACIO REYES
OSUNA, Deceased, and As Next Friend of
ZAID MARTIN REYES ARENAS; JUANA
SYLVIA OZUNA GARCIA; and MARTIN
REYES ADAME

V.

KIEWIT LOUISIANA CO., MASSMAN
CONSTRUCTION CO., and TRAYLOR
BROS., INC., a Joint Venture d/b/a KIEWIT
MASSMAN TRAYLOR CONSTRUCTORS;
KIEWIT LOUISIANA CO.; MASSMAN
CONSTRUCITON CO.; TRAYLOR
BROS., INC; KIEWIT ENGINEERING CO.,
and MODJESKI AND MASTERS, INC.

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C.A. NO. 4:09-CV-02521

DEFENDANT’S 12(b)(6) MOTION TO DISMISS

Defendant, Modjeski and Masters, Inc. (“Modjeski”) hereby files this Motion to Dismiss all claims asserted against it on the grounds that Plaintiffs have failed to state a claim upon which relief can be granted. Plaintiff has not filed a Certificate of Merit as required by Section 150.002 of the Civil Practice and Remedies Code. As more fully described in the attached Memorandum in Support, Modjeski respectfully avers that Plaintiff’s failure to timely file the Certificate of Merit mandates dismissal of the claims against it.

WHEREFORE, Modjeski and Masters, Inc., prays that there be judgment herein, dismissing the Petition and Amended Complaints as to Modjeski & Masters, Inc., with prejudice, at Plaintiffs' cost, and for all general and equitable relief that the Court may deem appropriate.

Respectfully submitted,

By: /s/ Forrest J. Wynn

Forrest J. Wynn

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following attorneys of record that have made an appearance in this matter by CM-ECF, facsimile or certified mail, return receipt requested on this 8th day of August, 2011.

/s/ Forrest J. Wynn

Forrest J. Wynn